BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2016-41-E

In Re:	)	
	)	**Duke Energy Progress, LLC Memorandum in**
Power Purchase Agreement	)	**Support of**
between Duke Energy Progress,	)	**Request for Confidential Treatment**
LLC and Olanta Solar, LLC	)	
	)	

On October 5, 2017, Duke Energy Progress, LLC ("DEP" or the "Company") filed an amendment to a Power Purchase Agreement ("PPA") between DEP and Olanta Solar, LLC ("Olanta Solar") for approval with the Public Service Commission of South Carolina (the "Commission") (this filing is referred to as the "October 5 Request"). The amendment was dated September 25, 2017 ("Amendment") and revised the PPA previously approved by the Commission in Order No. 2016-146. Along with the October 5 Request, DEP submitted a request for confidential treatment due to the commercially sensitive and proprietary nature of certain portions of the Amendment. DEP included with the October 5 Request a redacted version of the Amendment illustrating the portions for which confidentiality was requested. On October 24, 2017, the Office of Regulatory Staff ("ORS") filed a letter objecting to DEP's confidentiality request, noting that certain headers, column labels, and definitions were redacted, and requested that the Commission deny the Company's request unless and until the Company demonstrated why the redacted provisions are confidential. In response, the Company hereby submits this memorandum in support of its request for confidential treatment, along with a revised version of the redacted Amendment (attached as Exhibit A), which has fewer redactions than the previously-filed version.

Background

The PPA between DEP and Olanta Solar, which was approved by Order No. 2016-146, was also granted confidential protection by that order. In connection with its request for similar confidential protection for the Amendment filed on October 5, 2017, DEP provided to the ORS copies of both the redacted and unredacted versions of the Amendment. On November 13, 2017, another solar developer, Innovative Solar Systems, LLC ("Innovative Solar"), submitted a Freedom of Information Act ("FOIA") request to the ORS seeking the production of the Amendment for which DEP is seeking protection. Counsel for DEP wrote Innovative Solar asking that the FOIA request be withdrawn. *See* Exhibit B. Innovative Solar has responded to the letter but has refused to withdraw the FOIA request. *See* Exhibit C. On Wednesday, November 22, 2017, counsel for DEP responded to the Innovative Solar letter. *See* Exhibit D.

Argument

A. Commission Precedent Supports Granting the DEP Request for Confidentiality

The Commission's ruling in Order No. 2016-146 protecting the confidentiality of the PPA is consistent with other rulings by the Commission in similar matters and consistent with the policies of the Commission encouraging utilities to negotiate individual contracts with Qualifying Facilities ("QFs") under the Public Utility Regulatory Policies Act of 1978 ("PURPA"). In Order No. 2007-70, issued in Docket No. 1980-251-E, the Commission considered a request by Duke Energy Carolinas, LLC ("DEC") for protection of certain avoided cost information required to be filed with the Commission to comply with FERC regulations promulgated pursuant to PURPA. In considering the issue, the Commission required DEC to submit additional support for its request. DEC filed an amended request arguing that the documents "…contain confidential information that is proprietary and commercially sensitive

and if disclosed, could adversely affect the Company's ability to enter into arms-length generation procurement transactions." Order No. 2007-70, at p. 2, citing Duke Energy Carolinas, LLC's Amended Motion for Confidential Treatment filed Jan. 17, 2007. Based on the DEC showing, the Commission ruled that the information could be protected:

> A review of the material in question in the Company's 2006 Section 292.302 avoided cost information filing establishes that the material does provide detailed information concerning Duke Energy Carolinas' business and practices which are sensitive. The South Carolina Freedom of Information Act ("FOIA") allows exemption from disclosure proprietary business information that meets a definition of "trade secrets." S.C. Code Ann. Section 30-4-40(a)(1) states that matters which may be exempt from FOIA include: "(1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes…. Trade secrets also include, for those public bodies who market services or products in competition with others, feasibility, planning, and marketing studies, marine terminal service and nontariff agreements, and evaluations and other materials which contain references to potential customers, competitive information, or evaluation." We find that the information contained in Attachment B to the Company's 2006 Section 292.302 filing for which Duke Energy Carolinas seeks protection as confidential falls within the definition of materials which may be exempted from disclosure under FOIA.

Order No. 2007-70, at pp. 2-3.

The Commission's determination in Order No. 2007-70 is consistent with previous rulings in Docket No. 1980-251-E. In Order No. 1981-214, the initial order addressing PURPA issues for South Carolina, the Commission determined that it was in the public interest for electrical utilities and QFs to negotiate contracts for the purchase of power pursuant to PURPA. Order No. 1981-214, at p. 6. The Commission also recognized that "[p]ursuant to these [negotiated] agreements, the affected electrical utility and qualifying facility may set rates, terms and conditions relating to purchases which differ from those which otherwise would be required by Section 210 of PURPA and the rules and regulations promulgated thereunder." *Id.* While recognizing and encouraging utilities and QFs to negotiate such agreements, the Commission also retained oversight of negotiated PURPA contracts by requiring that any such contracts be

filed with the Commission. *Id.*, at p. 7. The Commission's practice of protecting the confidentiality of such contracts when they are filed is an appropriate balancing of its oversight role with the need to protect the ability of utilities to negotiate individualized terms of contracts with QFs.

By protecting the confidentiality of such contracts, the Commission has consistently recognized that the ability to negotiate different terms with different counterparties will be impacted by making such contracts available to anyone who asks for them. Making the contracts public would result in making them non-negotiable – a result at odds with the Commission's expressed intent encouraging utilities and QFs to negotiate contracts. Moreover, such a result would be counter the Commission's determination that "electric utilities and qualifying facilities should not be overly restricted in the type of arrangements which they may negotiate . . . ." Order No. 1981-214, at p. 5.

The Commission's approach to the confidentiality of negotiated PURPA agreements is consistent with its decision in Order No. 1991-272, issued in Docket No. 90-425-E, the Generic Proceeding Concerning the Confidentiality of Coal Contracts. In that proceeding, the Commission considered arguments by the Consumer Advocate that the Commission should end its practice of protecting from disclosure contracts between electrical utilities and suppliers of coal and coal transportation services. The electric utilities presented testimony that making the coal and transportation contracts public would impair the electric utilities' ability to negotiate favorable terms and thereby harm rate-payers: "Witnesses for the electric utilities testified that public disclosure of the coal supply and transportation contracts would increase the cost of fuel for electric companies in the jurisdiction. These witnesses testified that, ultimately the consumer would pay higher rates." Order No. 1991-272, at p. 6 (internal citations omitted).

Based on the record in the generic proceeding, the Commission declined to terminate its practice of protecting the confidentiality of coal and coal transportation contracts. The ruling was appealed by the Consumer Advocate in the context of an SCE&G fuel proceeding. The South Carolina Supreme Court affirmed the Commission's decision to protect the confidentiality of the contracts.

> Here, SCE&G alleged that its future negotiating position with coal producers and coal transports would be impaired if the contracts were made public. Thus, SCE&G met its burden of showing good cause by alleging a particularized harm. The Consumer Advocate also met his burden by alleging that the contracts were relevant and necessary to the Consumer Advocate's case. The Commission then properly weighed each parties' competing interest in the discovery materials and fashioned a remedy which protected SCE&G's confidential contracts from public disclosure while at the same time allowed the Consumer Advocate full access to the information he sought. The Consumer Advocate was prevented only from disseminating the information.

Hamm v. South Carolina Public Service Commission, 312 S.C. 238, 242, 439 S.E.2d 852 (1994).

The Commission's approach to protecting contracts for the purchase of coal and coal transportation, as affirmed by the Supreme Court, is equally appropriate for contracts for the purchase of solar energy. DEP's customers have a direct interest in the Company's ability to negotiate the most favorable terms for the purchase of power under PURPA, just like the interest customers have in the Company's ability to negotiate competitively for coal and coal transportation contracts. Protecting the disclosure of negotiated PPAs from competitors of the counterparty allows the utility to freely negotiate with all QFs for the most advantageous contract terms, to the benefit of customers. The Commission should extend its practice of protecting negotiated PPAs in this context because it furthers the Commission's intent in encouraging the negotiation of purchases of power under PURPA and is in the best interest of DEP's customers.

B. The Innovative Solar FOIA Request Underscores the Need for Protection of the PPA.

Innovative Solar is a solar developer that competes with Olanta Solar. It seeks, by a FOIA request to the ORS, to obtain access to the Amendment, including the terms that Olanta Solar and DEP agreed to protect as confidential. The request by Innovative Solar demonstrates that the terms of negotiated PPAs have commercial value to competitors and that competitors believe that access to those terms will enhance their negotiating position with DEP. The efforts by Innovative Solar to gain access to these confidential contract terms confirm the need for the protection sought by DEP.

It is also significant that Innovative Solar has, so far, refused to directly address the DEP request for confidentiality by making a filing with this Commission on the issue. *See* Exhibits B, C, and D. As demonstrated above, the question of whether negotiated QF PPAs should be protected as confidential is a question for this Commission to decide. It is inappropriate for Innovative Solar to avoid a direct request for relief from the Commission by seeking the document from the ORS.

WHEREFORE, Duke Energy Progress, LLC respectfully requests that the South Carolina Public Service Commission grant its request for confidential treatment of its Amendment to the Power Purchase Agreement.

Dated this 1st day of December, 2017.

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and

SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC

/s/Frank R. Ellerbe, III
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Attorneys for Duke Energy Progress, LLC

EXECUTION VERSION

AMENDMENT TO POWER PURCHASE AGREEMENT

THIS AMENDMENT TO POWER PURCHASE AGREEMENT (this "Amendment") is entered into on this 25th day of September, 2017, by and between **OLANTA SOLAR, LLC**, a North Carolina limited liability company ("Seller"), and **DUKE ENERGY PROGRESS, LLC**, a North Carolina limited liability company ("Buyer").

Buyer and Seller are herein referred to collectively as the "Parties" and individually as a "Party." Notwithstanding anything set forth herein, neither this Amendment nor any modification contemplated hereunder will be effective unless and until both Parties have executed and delivered this Amendment, and such date shall be the "**Effective Date**" of this Amendment.

Whereas, Buyer and Seller are parties to that certain Power Purchase Agreement, effective as of January 25, 2016, (the "Agreement");

[redacted]

Whereas, the Parties now desire to amend the Agreement pursuant to the terms set forth below.

Now Therefore, in consideration of the promises, mutual covenants and conditions set forth herein in this Amendment, the Agreement, and for good and valuable consideration, the sufficiency of which is acknowledged, and intending to be bound hereby, the Parties agree as follows:

1. **Limited Amendment.** The modifications to the Agreement specified in this Amendment shall be limited to the matters addressed herein and shall not be considered as a precedent for or obligate either Party to make any future agreements or modifications whether similar or dissimilar.

2. **Definitions.** Article 1 of the Agreement is hereby amended to add the following definition:

[redacted]

3. **Amendment to Revise the Term.** Section 3.1 of the Agreement is hereby replaced in its entirety with the following:

[redacted]

4. **Performance Assurance Requirements.** [redacted]

5. **Amendment to Replace the Performance Security Table.** The Performance Security Table set forth in Section 5.2.2 of the Agreement is hereby replaced in its entirety with the following:

PERFORMANCE SECURITY TABLE

[redacted]	
[redacted]	
[redacted]	
[redacted]	
[redacted]	
[redacted]	
[redacted]	
[redacted]	
[redacted]	
[redacted]	

6. **Amendments to Replace Certain Exhibits.**

   (i) **Exhibit 2 (Contract Price).** Exhibit 2 attached to the Agreement is hereby replaced in its entirety with the Exhibit 2 attached to this Amendment.

   (ii) **Exhibit 3 (Operational Milestone Schedule).** Exhibit 3 attached to the Agreement is hereby replaced in its entirety with the Exhibit 3 attached to this Amendment.

7. **Cost Recovery.** Pursuant to Section 24.5 of the Agreement, Seller shall pay Buyer an administration charge of [redacted] which shall be due and payable within five (5) Business Days after the Effective Date of this Amendment.

8. **No Further Amendment.** Except as herein amended, all terms and conditions of the Agreement are hereby reaffirmed and shall remain in full force and effect as previously written and shall be construed as one document with this Amendment.

9. **Regulatory Approvals**. Seller represents and warrants to Buyer that, as of the date of this Amendment, Seller has obtained such approvals as may be required by all applicable regulatory bodies in connection with, or related, the matters addressed in this Amendment.

10. **Representations and Warranties.** Each Party represents and warrants to the other that: (i) each has the capacity, authority and power to execute, deliver, and perform under this Amendment; (ii) this Amendment constitutes legal, valid and binding obligations enforceable against it; (iii) each person who executes this Amendment on behalf of each Party warrants to having full and complete authority to do so; (iv) each Party is acting on its own behalf, has made its own independent decision to enter into this Amendment, has performed its own independent due diligence, is not relying upon the recommendations of any other party, and is capable of understanding, understands, and accepts the provisions of this Amendment; (v) each Party has completely read, fully understands, and voluntarily accepts every provision hereof; (vi) each Party agrees that neither Party shall have any provision hereof construed against such Party by reason of such Party drafting any provision of this document; and, (vii) nothing in this Amendment intended to modify or otherwise clarify the intent of any provision of the Agreement, except to the extent expressly modified hereby.

11. **Defined Terms.** All capitalized terms not defined herein shall have the same meaning ascribed to such term in the Agreement.

12. **Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of North Carolina, without reference to choice of law doctrines.

13. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which will be deemed an original but all of which together shall constitute one and the same agreement.

IN WITNESS THEREOF, the Parties have caused this Amendment to be executed by their duly authorized representatives effective as of the Effective Date.

Duke Energy Progress, LLC

By: _____

Name: Gary Freeman

Title: GM DER Compl, Origination & Ops, Renewable Gen Dev & Wholesale

Date: September 25, 2017

Olanta Solar, LLC

By: _____

Name: Matthew McCabe

Title: Authorized Person

Date: 9/25/17

Exhibit 2

Contract Price

$/MWh

	Energy Pricing		On-Peak Capacity Pricing	
Calendar Year during the Delivery Period	On-Peak	Off-Peak	Summer	Non-Summer
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Definitions:

1. The Summer months are the period from June 1 through September 30.
2. The Non-Summer months are the period from October 1 through May 31.
3. The On-Peak hours shall be those hours, Monday through Friday, beginning at 1 P.M. and ending at 9 P.M. during Summer Months, and beginning at 6 A.M. and ending at 1 P.M. during Non-Summer Months.
4. The Off-Peak hours in any month are defined as all hours not specified above as on-peak hours. All hours for the following holidays will be considered as Off-Peak: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after, and Christmas Day. When one of the above holidays falls on a Saturday, the Friday before the holiday will be considered off-peak; when the holiday falls on a Sunday, the following Monday will be considered Off-Peak.

Notes:

1 Buyer will make payments for Capacity only during On-Peak hours, as defined above.

2 The Contract Price shall be the sum of the applicable Energy and Capacity (when payable) prices derived from the above table, which shall constitute the total price for the Product.

Exhibit 3

Operational Milestone Schedule

Deadline	Performance/Result Seller Must Timely Achieve
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

1. **Financing Milestone Commitment.** Seller shall deliver to Buyer a complete financing package (including all necessary construction, equity and debt financing) with one or more letters or agreements of commitment that in the aggregate commit to provide complete financing of the Facility, and each of which meet all of the minimum requirements set forth below, as determined by Buyer in Buyer's Commercially Reasonable discretion. Buyer has no responsibility or obligation of

any kind to Seller or any other person or entity in connection with any aspect of Seller's financing or the Financing Milestone Commitment.

1.1. The commitment package is fully underwritten, executed and binding (not "best efforts," a term sheet, or some lesser commitment), subject only to Commercially Reasonable customary closing conditions (so long as such customary closing conditions do not dilute or reduce the binding nature of the financing commitment).

1.2. The commitment package is in an amount that is sufficient to fund the construction of the Facility and for the Facility to achieve Commercial Operation.

1.3. Seller and any investors and lenders have fully agreed as to all of the material terms of their respective transactions.

1.4. All investors and lenders have completed their due diligence and approved the form of the power purchase agreement, panel supply agreement, engineering procurement and construction contract and other significant agreements, subject only to the execution and delivery of those documents, and the preliminary construction budget for the Facility; provided, however, if the documents are not in final form, the investors and lenders have approved the then-current form of such documents.

1.5. Investors and lenders retain no further approval rights with respect to size, site or technical aspects of the Facility, except for Commercially Reasonable approval of the Facility as built.

1.6. None of Seller, lender or investor require an estoppel, collateral estoppel, or consent to the collateral assignment of the Agreement from Buyer.

1.7. The commitment is free of conditions to effectiveness relating to the internal approvals of such financing parties.

1.8. There is no general condition to financing that the investors and lenders be satisfied with the Facility (other than the investor and/or lender's right to approve the Facility as built).

2. **Final System Design Under Interconnection Agreement.** Seller shall deliver to Buyer a copy of the design specifications delivered by Seller to the Transmission Provider as of Seller's execution of the facility study agreement with the Transmission Provider, which design specifications shall be deemed as the "final" system design for purposes of Seller's obligation to timely achieve the Commercial Operation Date set forth above in this Exhibit 3. The final design specification documents delivered by Seller shall be labeled as ***"FINAL"***, and shall be sealed with a North Carolina Professional Engineer for purposes of establishing the final design submitted by the Seller based on which the Transmission Provider will determine impacts to the System and construct interconnection facilities for Seller to interconnect with the System and perform under this Agreement. If Seller determines to modify the design submitted as the "Final" system design, Seller shall submit the modified "final" design to Buyer. Seller understands that changes in system design may be deemed as material or significant design changes by the Transmission Provider, and could result in the Transmission Provider withdrawing Seller's position in the transmission queue or otherwise withdrawing Seller's transmission request, as may be determined by the Transmission Provider. Seller agrees and acknowledges that any changes to the system design shall be at Seller's sole risk and liability, and shall not excuse Seller's performance or liability under this Agreement.

3. **Required Permits and Approvals.** Seller shall identify and list all Permits necessary for Seller to design, construct, test, commission, and fully operate the Facility. Seller shall also identify and list the individual deadline by which Seller must secure each of the Permits for Seller to achieve the Commercial Operation Date set forth above in this Exhibit 3. Seller shall keep Buyer informed of its efforts to secure the Permits, including, without limitation, informing Buyer of the date when the request for the Permit is submitted to and date that the final Permit is obtained from the appropriate Governmental Authority. For each identified Permit, Seller shall provide Buyer written notice, and any supporting documentation requested by Buyer in its Commercially Reasonable Discretion, that the identified Permits have been obtained, including, without limitation, any approvals from the appropriate Governmental Authority approving the land use, site plan and construction of the Facility.

4. **Commencement Readiness Requirements.** Seller shall deliver to Buyer the list of major development and construction activities, together with deadlines for the commencement and successful completion of those activities for Seller to achieve the Commercial Operation Date set forth in this Exhibit 3. For each identified activity, Seller shall provide Buyer

written notice, and any supporting documentation requested by Buyer in its Commercially Reasonable Discretion, that the identified activity has been commenced and/or successfully completed. The list of major development and construction activities, together with commencement and completion deadlines, will include each of the following:

4.1. Proof of Seller's rights and interest in the site upon which the Facility is to be constructed, including the applicable sale agreement or long-term lease.

4.2. Delineation of any long lead-time procurement items, including a schedule for ordering and proof of such activity.

4.3. A Facility construction and operation key milestone schedule, reflecting the critical milestone events for design and construction of the facility including the date upon which Seller shall achieve: thirty and ninety percent detailed design; site mobilization and commencement; mechanical completion; substantial completion; and final completion.

4.4. Identification of Seller's key personnel, with primary responsibility for the design and construction of the Facility and communications with Buyer.

4.5. Seller's performance and capacity testing plan, in which Seller defines the performance output requirements of the Facility and describes the procedures and timing for all testing that will be conducted to demonstrate whether the Facility meets the applicable performance requirements and conditions.

SOWELL GRAY ROBINSON
Litigation + Business

FRANK R. ELLERBE, III
DIRECT 803 227.1112 DIRECT FAX 803 744.1556
fellerbe@sowellgray.com

November 20, 2017

VIA E-MAIL AND U.S. MAIL
John E. Green, CEO & Co-Founder
Craig Sherman, Chief Financial Officer
Innovative Solar Systems, LLC
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craig@innovativesolarsystemsllc.com

Re: Freedom of Information Act request to the Office of Regulatory Staff by Innovative Solar Systems, LLC.

Gentlemen:

This firm represents Duke Energy Progress, LLC ("DEP"). I am writing you about a Freedom of Information Act ("FOIA" or "the Act") request made by Innovative Solar Systems to the Office of Regulatory Staff ("ORS") requesting confidential copies of amendments to Power Purchase Agreements ("PPAs") between DEP and Dillon Solar and Olanta Solar.

The DEP PPAs with Dillon Solar and Olanta Solar were accepted for filing by the South Carolina Public Service Commission ("Commission") by Order No. 2016-147 in Docket No. 2016-42-E. The same order granted confidential treatment to the contracts. Subsequently, DEP negotiated revisions to the PPAs and, on October 5, 2017, filed the amendments with the Commission and asked that the Commission extend its grant of confidentiality to the amendments. On October 6th DEP delivered confidential copies of the amendments to the ORS so that the ORS could review our request that the amendments be treated as confidential.

We have been informed by the ORS that your company has now made a FOIA request for the production of the contract amendments and that the request includes the unredacted versions of the amendments that are marked "confidential."

We ask that you withdraw your FOIA request to the extent it seeks documents that have been designated as confidential. We have no objection to Innovative Solar Systems taking action before the Commission to contest our request that the documents be treated as confidential. However, we don't think it is fair for you to put the ORS in the position of having to resolve a dispute between DEC and your company over whether the documents should be protected from disclosure.

Under the Act, DEP has the option of filing an action for enforcement of its provisions in Richland County Circuit Court. If your company will not agree to withdraw or limit its request as described above, DEP will consider bringing an action seeking immediate injunctive relief. The Act has provisions that allow the recovery of attorneys fees in some situations. It is my understanding that Innovative Solar Systems has at least two PPAs with DEP that are similar to the Dillon Solar and Olanta Solar agreements and which contain confidentiality provisions like those in the Dillon and Olanta agreements. It is a clear basis for an award of attorneys fees that your company is seeking to use the FOIA to gain access to information that it has agreed should be protected as confidential.

Please respond to this letter no later than Friday, November 24th so that DEP can determine how it will proceed.

Yours truly,

Frank R. Ellerbe, III

cc: Jeffrey M. Nelson, Chief Counsel, Director Legal Services (via email)
Heather Shirley Smith, Deputy General Counsel (via email)
Rebecca J. Dulin, Senior Counsel (via email)

Innovative Solar Systems, LLC
1095 Hendersonville Road
Asheville, NC 28803
(816)500-5750

Frank R. Ellerbee, III
Sowell, Gray, Robinson
1310 Gadsden Street
P.O. Box 11449
Columbia, SC 29211

November 21, 2017

VIA EMAIL:
fellerbe@sowellgray.com

Dear Mr. Ellerbee:

I have received and reviewed your letter delivered via email dated November 20, 2017. I would like to point out a few inaccuracies in your recitation of facts.

1. Innovative Solar Systems does not have any Power Purchase Agreements with Duke Energy Progress.
2. No current affiliate or subsidiary of Innovative Solar Systems has executed a Power Purchase Agreement with Duke Energy Progress.
3. As such, Innovative Solar Systems has not agreed with Duke Energy Progress, to protect the confidentiality of Power Purchase Agreement provisions similar to those with Dillon Solar and Olanta Solar.
4. The written request submitted by Innovative Solar Systems to the South Carolina Office of Regulatory Staff is attached hereto and is self-explanatory as to the actual request made.

Your letter states that your client would not object to Innovative Solar Systems filing an action with the Commission contesting Duke Energy Progress's request for confidentiality. Innovative Solar Systems has not contested any assertion by Duke Energy Progress of confidentiality. Innovative Solar Systems has complied with the State of South Carolina's Freedom of Information Act. Innovative Solar Systems asked for public documents submitted to the Office of Regulatory Staff. By law, the Office of Regulatory Staff may determine what documents or parts of documents submitted to them are granted confidential treatment.

Innovative Solar Systems has taken no position with regard to confidentiality or non-confidentiality of the documents requested. Threatening to sue Innovative Solar Systems and to recover attorney's fees from Innovative Solar Systems is unwarranted. Your letter states that you do not "think it is fair for you (Innovative Solar Systems) to put ORS in the position of having to resolve a dispute between DEC (Duke Energy Carolinas) and your company (Innovative Solar Systems) over whether documents should be

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protected from disclosure." As previously stated, Innovative Solar Systems has no dispute with either Duke Energy Progress or Duke Energy Carolinas regarding confidentiality.

Innovative Solar Systems has filed a South Carolina FOIA request and is waiting on the Office of Regulatory Staff to exercise their mandated statutory discretion and determine what may be released. Innovative Solar Systems has not taken any action adverse to Duke Energy Progress.

Innovative Solar Systems will further consider your letter and upon reaching a decision, will promptly notify you of that decision. I wanted to make sure that you were aware immediately of the true facts regarding actions taken by Innovative Solar Systems.

Sincerely Yours,

Robert H. Gardner
COO and General Counsel
robert.gardner@innovativesolarsystemsllc.com

Frank R. Ellerbe III

From: Frank R. Ellerbe III
Sent: Wednesday, November 22, 2017 4:18 PM
To: 'Robert Gardner'
Cc: John Green; Craig Sherman; Richard Green; 'Nelson, Jeff'; 'Dulin, Rebecca Jean'
Subject: RE: FOIA Request to South Carolina Office of Regulatory Staff.

Mr. Gardner:

Thank you for your quick response to my letter. I am writing to respond to an issue you raised and to elaborate on my suggestion that your request for the documents that DEP designated confidential should be made to the Public Service Commission and not to the Office of Regulatory Staff.

Your letter states that neither Innovative Solar Systems nor its affiliates have any PPAs with DEP. I assume your contention is based on the fact that all of the solar PPAs that your company negotiated with DEP have been sold to third parties. It is certainly true that your company has negotiated and agreed to PPAs with confidentiality provisions like those found in the Dillon and Olanta Solar PPAs. The fact that your company has sold the projects does not weaken our argument as outlined in my letter in the least.

DEP has made a request to the Public Service Commission that portions of the PPAs be maintained as confidential. That request is still pending and the unredacted versions were provided to the ORS so that it could determine what position it would take regarding the DEP request. If your company wants access to the unredacted copies of the PPAs you should directly state your position to the Commission. The Commission is the appropriate body to rule on whether these PPAs can be protected, not the ORS.

I hope you will reconsider your position and withdraw your FOIA request to the ORS.

Frank Ellerbe

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